

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: FORSSELL et al.
Title: METHOD AND ARRANGEMENT FOR
TRANSFERRING INFORMATION IN A
PACKET RADIO SERVICE
Appl. No.: 10/699,162
Filing Date: 10/31/2003
Examiner: Kevin D. Mew
Art Unit: 2416
Confirmation 1603
Number:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above-captioned application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and presents the following facts per the procedure set forth in 37 C.F.R. § 1.705(b) to support their contention that the patent term adjustment should be 1231 days instead of 816 days as calculated by the United States Patent and Trademark Office (PTO).

The Patent Office determined that the patent was entitled to 816 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of “overlap” are limited to “periods of time . . . [that] occur on the same day.” *Wyeth*, slip op. at 8. Thus, a PTO

delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

Applicants have recalculated PTA for the captioned patent under the court’s interpretation of the PTA statute, and have determined that the patent is entitled to 1231 days PTA, as shown on the attached sheet labeled Exhibit A, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

Exhibit A details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1322 days

(b) Total Applicant delay: 91 days

Final PTA Determination: 1231 days

Applicants therefore respectfully request that the patent be accorded 1231 days PTA.

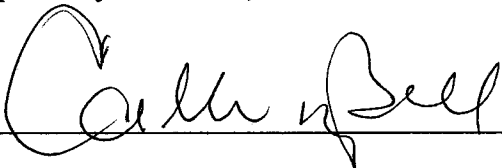
The \$200.00 petition fee is being paid by credit card via EFS-web.

The present application is not subject to a terminal disclaimer.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16 1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By 

Date January 21, 2009

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ALL CASES

SELECT CASE

Patent Term Adjustment Calculation System

Docket Number: 088245-1332
 Application Number: 10/699162
 Patent Number: N/A

Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Application Filing Date	10/31/2003	0		
Notice to File Missing Parts	02/04/2004	96		
Response to Notice to File Missing Parts	03/01/2004	122		
14 month From Application date	12/31/2004	427		
3 Year Period Starts	10/31/2006	1,096		
Non-Final Office Action	06/26/2007	1,334	(907)	
Non-Final Office Action Rsp. Rcv'd at PTO	09/24/2007	1,424		
Final Office Action	12/19/2007	1,510		
Final Office Action Response Received at PTO	01/17/2008	1,539		
Advisory Action	02/12/2008	1,565		
Final Office Action + 3 months	03/19/2008	1,601		
Notice of Appeal Received at PTO	06/18/2008	1,692		91
Notice of Appeal Received at PTO	06/18/2008	1,692		
Request For Continued Examination	08/14/2008	1,749		
3 Year Period Stopped	08/14/2008	1,749	(653) 1322	
Notice of Allowance	10/29/2008	1,825		
Projected Patent Grant Date	05/12/2009	2,020		
		Totals:	1,322	91
		PTA:	1,231	

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LOGIN: Foley & Lardner

IP: 10.24.4.83

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EXHIBIT A